

**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION  
OF BULLDOG COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY PERMIT,  
NO. 8153-M1** **AQB 21-31**

**IN THE MATTER OF THE APPLICATION  
OF JAYHAWK COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY PERMIT,  
NO. 8152-M1** **AQB 21-32**

**IN THE MATTER OF THE APPLICATION  
OF LONGHORN COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY PERMIT,  
NO. 8349-M2** **AQB 21-33**

**IN THE MATTER OF THE APPLICATION  
OF COWBOY CDP (XTO ENERGY)  
FOR AN AIR QUALITY PERMIT,  
NO. 7877-M1** **AQB 21-34**

**IN THE MATTER OF THE APPLICATION  
OF WILDCAT COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY PERMIT,  
NO. 7474-M2** **AQB 21-35**

**IN THE MATTER OF THE APPLICATION  
MAVERICK COMPRESSOR STATION  
(XTO) FOR AN AIR QUALITY PERMIT,  
NO. 7565-M2** **AQB 21-39**

**IN THE MATTER OF THE APPLICATION  
SPARTAN COMPRESSOR STATION  
(XTO) FOR AN AIR QUALITY PERMIT,  
NO. 7681-M2** **AQB 21-40**

**IN THE MATTER OF THE APPLICATION  
TIGER COMPRESSOR STATION  
(XTO) FOR AN AIR QUALITY PERMIT,  
NO. 7623-M2** **AQB 21-41**

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**NEW MEXICO ENVIRONMENT DEPARTMENT AIR QUALITY BUREAU'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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COMES NOW, the Air Quality Bureau (“Bureau”), within the Environmental Protection Division (“Division”) of the New Mexico Environment Department (“Department”), and respectfully submits these Proposed Findings of Fact and Conclusions of Law in the above captioned matters, pursuant to 20.1.4.400(B) NMAC.

## **I. PROPOSED FINDINGS OF FACT**

### **A. The Applicant and Facilities**

1. XTO Energy, Inc. (“Permittee”) is a Texas-based foreign profit corporation and the owner/operator of the following facilities (referred to jointly as “Facilities”).

- a) Bulldog Compressor Station (“Bulldog CS”), for which the Permittee is seeking a Significant Permit Revision to Permit No. 8153M1, pursuant to 20.2.72.219(D) NMAC. Bulldog CS is a typical compressor station with natural gas engines, dehydration, storage tanks, and flares. It is located in Eddy County, New Mexico, Section 22, Range 31E, Township 20S. [AQB 21-31 AR Nos. 7, Bates 0273; 1 Bates 013].
- b) Jayhawk Compressor Station (“Jayhawk CS”), for which the Permittee is seeking a Significant Permit Revision to Permit No. 8152M1, pursuant to 20.2.72.219(D) NMAC. Jayhawk CS is a typical compressor station with natural gas engines, dehydration, storage tanks, and flares. It is located in Lea County, New Mexico, Section 17, Range 32E, Township 20S. [AQB 21-32 AR Nos. 13, Bates 464; 1 Bates 010].
- c) Longhorn Compressor Station (“Longhorn CS”), for which the Permittee is seeking a Significant Permit Revision to Permit No. 8349M2, pursuant to

20.2.72.219(D) NMAC. Longhorn CS is a typical compressor station with natural gas engines, dehydration, storage tanks, and flares. It is located in Eddy County, New Mexico, Section 23, Range 30E, Township 22S. [AQB 21-33 AR Nos. 7, Bates 252; 1 Bates 0012].

- d) Cowboy Central Delivery Point (“Cowboy CDP”), for which Permittee is seeking a Significant Revision to Permit No. 7877M1, pursuant to 20.2.72.219(D) NMAC. Cowboy CDP is a gas processing facility with oil and natural gas liquid (“NGL”) stabilization. It is located in Eddy County, New Mexico, Section 1, Range 30E, Township 25S. [AQB 21-34 AR Nos. 4, Bates 405; 1 Bates 0006].
- e) Wildcat Compressor Station (“Wildcat CS”), for which the Permittee is seeking a Significant Permit Revision to Permit No. 7474M2, pursuant to 20.2.72.219(D) NMAC. Wildcat CS is a typical compressor station with natural gas engines, dehydration, storage tanks, and flares. It is located in Eddy County, New Mexico, Section 21, Range 31E, Township 24S. [AQB 21-35 AR Nos. 18, Bates 278; 3 231].
- f) Maverick Compressor Station (“Maverick CS”), for which the Permittee is seeking a Significant Permit Revision to Permit No. 7565M2, pursuant to 20.2.72.219(D) NMAC. Maverick CS is a typical compressor station with natural gas engines, dehydration, storage tanks, and flares. It is located in Eddy County, New Mexico, Section 20, Range 31E, Township 25S. [AQB 21-39 AR No. 13, Bates 661; 1 Bates 010].

- g) Spartan Compressor Station (“Spartan CS”), for which the Permittee is seeking a Significant Permit Revision to Permit No. 7681M2, pursuant to 20.2.72.219(D) NMAC. Spartan CS is a typical compressor station with natural gas engines, dehydration, storage tanks, and flares. It is located in Eddy County, New Mexico, Section 24, Range 30E, Township 24S. [AQB 21-40 AR No. 10, Bates 327; 1 Bates 11].
- h) Tiger Compressor Station (“Tiger CS”), for which the Permittee is seeking a Significant Permit Revision to Permit No. 7623M2, pursuant to 20.2.72.219(D) NMAC. Tiger CS is a typical compressor station with natural gas engines, dehydration, storage tanks, and flares. It is located in Eddy County, New Mexico, Section 20, Range 30E, Township 25S. [AQB 21-41 AR No. 10, Bates 326; 1 Bates 011].

**B. The Bureau’s Administrative and Technical Review of the Respective Applications**

**i) Bulldog CS (AQB 21-31); Longhorn CS (AQB 21-33); Spartan CS (AQB 21-40); and Tiger CS (AQB 21-41)**

2. The Bureau’s Permit Specialist, Urshula Bajracharya, was the responsible permit writer for Bulldog CS, Longhorn CS, Spartan CS, and Tiger CS (referred to collectively at the “Bajracharya Applications”). [NMED Exhibits 21-25].

3. The application for Bulldog CS was received by the Bureau on September 25, 2020. The application for Longhorn CS was received by the Bureau on September 30, 2020. The applications for Spartan CS and Tiger were received by the Bureau on March 8, 2021. [Bulldog

CS: NMED Exhibits 21 at 2; Longhorn CS: NMED Exhibit 22 at 2; Spartan CS: NMED Exhibit 23 at 2; Tiger CS: NMED Exhibit 24 at 2].

4. In both the Bulldog CS and Longhorn CS applications, the Permittee proposes modifications to the following: eleven (11) compressor engines; three (3) reboilers; two (2) flares; one (1) still vent emission; two (2) skim tanks; four (4) condensate tanks; two (2) produced water tanks; two (2) vapor recovery units; three (3) TEG dehydrator units; low pressure separator; truck loading; and fugitive emissions. [Bulldog CS: NMED Exhibits 21 at 2; Longhorn CS: NMED Exhibit 22 at 2].

5. In the Spartan CS application, the Permittee proposes modifications to the following: revise compressor engine emissions rates; remove two (2) heaters; remove two (2) compressor engines; increase glycol circulation rate; decrease glycol dehydrator reboiler capacities; increase dehydrator Startup, Shutdown and Malfunction (“SSM”) hours; add SSM for dehydrator flash tank vapors; increase flare purge gas rate; update to flare height; update to-tank throughput; decrease condensate truck loading; add inlet gas flaring; increase steady state flaring associated with tank throughput and glycol circulation rate; change sources that vent to vapor combustor; update low pressure separator pressure; and add volatile organic compounds (“VOC”) malfunction emission. [Spartan CS: NMED Exhibit 23 at 2].

6. In the Tiger CS application, the Permittee proposes modifications to the following: removal of two (2) compressor engines and two (2) heaters, modification of eleven (11) compressor engines, three (3) glycol dehydrators and their respective reboilers, three (3) flares, four (4) condensate tanks, two (2) produced water tanks, two (2) vapor recovery units (“VRU”), the low-pressure separator, the condensate truck loading and start-up, shutdown and maintenance

(SSM). The facility is proposing to add two new emissions sources: truck loading and Malfunction emissions. [Tiger CS: NMED Exhibit 24 at 2].

7. Upon receipt of the Bajaracharya Applications, Bureau staff forwarded the Permittee's respective modeling files to the Bureau's Modeling Manager. [Bulldog CS: NMED Exhibits 21 at 2; Longhorn CS: NMED Exhibit 22 at 2; Spartan CS: NMED Exhibit 23 at 3].

8. On October 19, 2020, Bureau staff were informed that the Bulldog CS Application could be ruled complete from a modeling perspective. On October 20, 2020, Bureau staff ruled the Longhorn CS Application administratively complete from a modeling perspective. On March 30, 2021, Bureau staff ruled the Spartan CS Application administratively complete from a modeling perspective. On April 6, 2021, Bureau staff ruled the Tiger CS Application administratively complete from a modeling perspective. [Bulldog CS: NMED Exhibit 21 at 2; AR Nos. 2, Bates 0243-0247; Longhorn CS: NMED Exhibit 22 at 3; AR 20, Bates 930; Spartan CS: NMED Exhibit 23 at 3; AR No. 23, Bates 433-435; Tiger CS: NMED Exhibit 24 at 2-3; AR No. 23, Bates 432 - 434].

9. On October 23, 2020, Bureau staff ruled the Bulldog CS application administratively complete. [Bulldog CS: NMED Exhibit 21 at 3; AR Nos. 2, Bates 0243-0247].

10. On October 23, 2020, Bureau staff ruled the Longhorn CS application administratively complete. [Longhorn CS: NMED Exhibit 22 at 2-3; AR Nos. 20, Bates 0930].

11. On April 6, 2021, Bureau staff ruled the Spartan CS application administratively complete. [Spartan CS: NMED Exhibit 23 at 3; AR No. 2, Bates 288 - 292].

12. On April 7, 2021, Bureau staff ruled the Tiger CS application administratively complete. [Tiger CS: NMED Exhibit 24 at 3; AR No. 2, Bates 289 – 293]

13. Bureau staff began respective technical reviews of the Bajracharya Applications after a determination that each application was administratively complete. During the technical reviews, Bureau staff verified emissions calculations by confirming the correct emission factors and formulas were used in calculating emissions for all sources. If methods were unclear, Bureau staff asked the Permittee's consultant for further explanation or updates, as necessary. Bureau staff also verified the emissions totals from the calculations matched the emissions totals in Section 2 of each of the applications. [Bulldog CS: NMED Exhibits 21 at 3-4; Longhorn CS: NMED Exhibit 22 at 4; Spartan CS: NMED Exhibit 23 at 4; Tiger CS: NMED Exhibit 24 at 4].

14. Bureau staff reviewed the emission calculations submitted in each of the Bajracharya Applications for all regulated equipment and the respective emission factors relied upon in those calculations. Each of the facilities emissions were calculated using Excel spreadsheets using manufacturer's data sheet emission factors, Texas Commission on Environmental Quality emission factors, or the United States Environmental Protection Agency's ("EPA") *AP-42 Compilation of Air Emission Factors*, including EPA's *Protocol for Equipment Leak Emission Estimates (EPA-453/R-95-017)*, as well as oil and gas industry software, such as *ProMax®*. [Bulldog CS: NMED Exhibits 21 at 4; Longhorn CS: NMED Exhibit 22 at 4; Spartan CS: NMED Exhibit 23 at 4; Tiger CS: NMED Exhibit 24 at 4].

15. The Bureau's administrative and technical reviews for the Bajracharya Applications are summarized in the respective Statement of Basis for each facility, which is a permitting record that includes: (1) a description and history of the facility; (2) a regulatory applicability review; (3) a compliance discussion; (4) any public response received by the Department; and (5) a summary any unique conditions in the permit. [Bulldog CS: NMED Exhibit

21 at 4; AR No. 7, Bates 0273-0278; Longhorn CS: NMED Exhibit 22 at 4; AR No. 7, Bates 0252-0258; Spartan CS: NMED Exhibit 23 at 4; AR No. 10, Bates 327-333; Tiger CS: NMED Exhibit 24 at 4; AR No. 10, Bates 236-332.].

16. Bureau staff testified that based on the Bureau's administrative and technical review of the Bajracharya Applications, the Bureau recommends that the Secretary adopt the respective Draft Permits.

**ii) Jayhawk CS (AQB 21-32 ) and Maverick CS (AQB 21-39)**

17. The Bureau's Permit Specialist, Julia Kuhn, was the responsible permit writer for Jayhawk CS and Maverick CS (referred to collectively at the "Kuhn Applications"). [NMED Exhibits 31-32].

18. The application for Jayhawk CS was received by the Bureau on September 30, 2020. The application for Maverick CS was received by the Bureau on March 8, 2021. [Jayhawk CS: NMED Exhibit 31 at 3; Maverick CS: NMED Exhibit 32 at 2].

19. In the Jayhawk CS application, the Permittee proposes modifications to the following: revising engine emissions rates and control efficiencies; removing two heaters, two engines, and one flare; increasing glycol circulation rates for three dehydrators; decreasing glycol dehydrator reboiler capacities; increasing flare purge gas rate; updating condensate tank throughput, water tank throughput, condensate truck loading, tank nomenclature, sources venting to the vapor recovery unit (VRU), low pressure separator (LPS) pressure, and facility location coordinates; revising steady state flaring associated with revised tank throughputs and glycol circulation rate; adding Malfunction emissions; increasing flare heights and adding an inlet gas flaring. The facility is currently permitted under NSR 8152, issued May 7, 2019. The new permit



would update conditions and requirements for monitoring, testing, recordkeeping, and reporting. [Jayhawk CS: NMED Exhibit 31 at 2-3; AR No. 15, Bates 526-574].

20. In the Maverick CS application, the Permittee proposes modifications to the following: revising engine emissions rates and control efficiencies; removing two heaters and two engines; increasing glycol circulation rates for three dehydrators; decreasing glycol dehydrator reboiler capacities; increasing flare purge gas rate; updating condensate tank throughput, water tank throughput, condensate truck loading, tank nomenclature, low pressure separator (LPS) pressure, and facility location coordinates; revising steady state flaring associated with revised tank throughputs and glycol circulation rate; adding Malfunction emissions, revising dehydrators SSM, increasing flare heights and adding an inlet gas flaring. The facility is currently permitted under NSR 7565M1, issued on February 6, 2019. The new permit would update conditions and requirements for monitoring, testing, recordkeeping, and reporting. [Maverick CS: NMED Exhibit 32 at 2-3; AR No. 15, Bates 725-774].

21. Upon receipt of the Kuhn Applications, Bureau staff forwarded the Permittee's respective modeling files to the Bureau's Modeling Manager. [Jayhawk CS: NMED Exhibits 31 at 3; Maverick CS: NMED Exhibit 32 at 3].

22. On October 26, 2020, Bureau staff were informed that the Jayhawk CS application could be ruled complete from a modeling perspective. On March 18, 2021, Bureau staff ruled the Maverick CS application administratively complete from a modeling perspective. [Jayhawk CS: NMED Exhibit 31 at 3-4; AR No. 26, Bates 625-626; Maverick CS: NMED Exhibit 32 at 3; AR No. 26, Bates 821-822].

23. On October 29, 2020, Bureau staff ruled the Jayhawk CS application administratively complete. [Jayhawk CS: NMED Exhibit 21 at 4; AR No 8, Bates 430-435].

24. On April 7, 2021, Bureau staff ruled the Maverick CS application administratively complete. [Maverick CS: NMED Exhibit 32 at 3; AR No. 6, Bates 621-626].

25. Bureau staff began respective technical reviews of the Kuhn Applications after a determination that each application was administratively complete. During the technical reviews, Bureau staff verified emissions calculations by confirming the correct emission factors and formulas were used in calculating emissions for all sources. If methods were unclear, Bureau staff asked the Permittee's consultant for further explanation or updates, as necessary. Bureau staff also verified the emissions totals from the calculations matched the emissions totals in Section 2 of each of the applications. [Jayhawk CS: NMED Exhibits 31 at 5; Maverick CS: NMED Exhibit 32 at 4].

26. The Bureau staff reviewed the emission calculations submitted in both of the Kuhn Applications for all regulated equipment and the emission factors relied upon in those calculations. The facilities' emissions were calculated using Excel spreadsheets using manufacturer's data sheet emission factors, Texas Commission on Environmental Quality emission factors, or the United States Environmental Protection Agency's ("EPA") *AP-42 Compilation of Air Emission Factors*, as well as oil and gas industry software. The emission factors used in the calculations are appropriate for these source types and are, thus, approved by the Department. The approved calculated emission rates were used as inputs into the Department's air dispersion modeling analyses. The air dispersion models predict concentrations of the National Ambient Air Quality

Standards (NAAQS) based upon the approved emission rates. [Jayhawk CS: NMED Exhibit 32 at 5-6; Maverick CS: NMED Exhibit 32 at 4-5].

27. The Bureau's administrative and technical reviews for the Kuhn Applications are summarized in the respective Statement of Basis for each facility, which is a permitting record that includes: (1) a description and history of the facility; (2) a regulatory applicability review; (3) a compliance discussion; (4) any public response received by the Department; and (5) a summary any unique conditions in the permit. [Jayhawk CS: NMED Exhibit 31 at ; AR No. 13, Bates 464-473; Maverick CS: NMED Exhibit 32 at 5; AR No. 13, Bates 661-670].

28. Bureau staff testified that based on the Bureau's administrative and technical review of the Kuhn Applications, the Bureau recommends that the Secretary adopt the respective Draft Permits.

**iii) Cowboy CDP (AQB 21-34)**

29. The application for Cowboy CDP was received by the Bureau on April 29, 2020. [Cowboy CDP: NMED Exhibit 27 at 3; AR No. 8, Bates 0488].

30. In the Cowboy CDP application, the Permittee proposes modifications to the following: addition of selective catalytic reduction to two stabilization heaters and two cryo heaters; removal of two stabilization heaters; reduction of the size and capacity of four internal floating roof tanks from 250,000 bbl to 100,000 bbl; addition of truck loading of slop oil; increase in stabilizer overhead and cryogenic blowdown startup, shutdown, and maintenance (SSM) emissions; updated speciation profiles for several sources; updated fugitive counts and calculations; updated tank throughputs; addition of four emergency generators; updated equipment nomenclature and unit numbers; addition and representation of electric compressors as subject to

NSPS Subpart OOOOa; consolidation of MSS floating roof tank landings under general SSM VOC emissions at a rate of 10 tpy; addition of 10 tpy VOC Malfunction emissions; and increase of the flare purge gas flow rates. Cowboy CDP has had an air quality permit to construct at this location since November 16, 2018, the date that NSR Permit 7877 was issued. The new permit 7877-M1 would replace the existing permit, incorporate the changes listed above, and add and update conditions and requirements for monitoring, testing, recordkeeping, and reporting. [Cowboy CDP: NMED Exhibit 27 at 2; AR No. 7, Bates 0442-0487].

31. Upon receipt of the Cowboy CDP application, Bureau staff forwarded the Permittee's respective modeling files to the Bureau's Modeler for review of the Permittee's modeling. [Cowboy CDP: NMED Exhibits 27 at 3].

32. On May 18, 2020, Bureau staff were informed by the Bureau's modelers that the Cowboy CDP application could be ruled complete from a modeling perspective. [Cowboy CDP: NMED Exhibit 27 at 3; AR No. 12, Bates 0846-0848].

33. Bureau staff also sent an email request for verification of compliance to the Bureau's Enforcement Section. The Bureau's Enforcement Section confirmed on May 20, 2020, that the facility had no outstanding notices of violation or settlement agreements for which all actions had not been completed. [Cowboy CDP: NMED Exhibit 27 at 3; AR No. 12, Bates 0846-0848; AR No. 11, Bates 0845; AR No. 13, Bates 0849-0850].

34. Prior to ruling the application administratively complete, the Bureau corresponded with the Permittee and their consultant to clarify questions concerning the application. Eventually, a revised application correcting errors was submitted. The revised application was relabeled

“original” and was used to review and create the draft permit documents. [Cowboy CDP: NMED Exhibit 27 at 3; AR No. 14, Bates 0851-0859].

35. On May 29, 2020, Bureau staff ruled the Cowboy CDP application administratively complete. [Cowboy CDP: NMED Exhibit 27 at 3; AR No. 19, Bates 0878-0883].

36. Bureau staff began the technical reviews of the Cowboy CDP application after a determination that the application was administratively complete. During the technical review, Bureau staff verified emissions calculations by confirming the correct emission factors and formulas were used in calculating emissions for all sources. If methods were unclear, Bureau staff asked the Permittee’s consultant for further explanation or updates, as necessary. Bureau staff also verified the emissions totals from the calculations matched the emissions totals in Section 2 of each of the applications. [Cowboy CDP: NMED Exhibits 27 at 4-5].

37. Bureau staff reviewed the emission calculations submitted in the Cowboy CDP application for all regulated equipment and the emission factors relied upon in those calculations. The approved calculated emission rates were used as inputs into the Bureau’s air dispersion modeling analysis. The air dispersion model predicts concentrations of the National Ambient Air Quality Standards (NAAQS) based upon the approved emission rates. The modeling report for Cowboy CDP used the most up to date modeling and emissions calculations in the application, on September 23, 2021 [Cowboy CDP: NMED Exhibit 27 at 4-5; AR No. 6, Bates 0431-0441].

38. The Bureau’s administrative and technical reviews for the Cowboy CDP application is summarized in the Statement of Basis, which is a permitting record that includes: (1) a description and history of the facility; (2) a regulatory applicability review; (3) a compliance

discussion; (4) any public response received by the Department; and (5) a summary any unique conditions in the permit. [Cowboy CDP: NMED Exhibit 27 at 5; AR No. 4, Bates 0405-0418].

39. Bureau staff testified that based on the Bureau's administrative and technical review of the Cowboy CDP application, the Bureau recommends that the Secretary adopt the Draft Permit. [Cowboy CDP: NMED Exhibit 27 at 15-16].

**iv) Wildcat CS (AQB 21-34)**

40. The application for Wildcat CS was received by the Bureau on June 8, 2020. The application was revised on November 8, 2020. [Wildcat CS: NMED Exhibit 34 at 3; AR No. 2 & 3 , Bates 052-234; AR No. 4, 5, & 6, Bates 235-242].

41. In the Wildcat CS application, the Permittee proposes modifications to the following: revising engine emissions rates, removing two heaters, removing two engines, decrease glycol dehydrator reboiler capacities, increase flare purge gas rate, update condensate tank throughput, water tank throughput, condensate truck loading, adding two vapor recovery units, revising steady state flaring associated with revised tank throughputs, adding Startup Shutdown and Maintenance (SSM) flaring, addition Malfunction venting, and increasing flare heights. The facility is currently permitted under NSR Permit No. 7474-M1, issued February 6, 2019. The new permit would update conditions and requirements for monitoring, testing, recordkeeping, and reporting. [Wildcat CS: NMED Exhibit 34 at 2-3; AR No. 1, Bates 001-052].

42. Upon receipt of the Wildcat CS application, Bureau staff forwarded the Permittee's respective modeling files to the Bureau's Modeler for review of the Permittee's modeling. [Wildcat CS: NMED Exhibit 34 at 3].

43. On July 6, 2020, Bureau staff were informed by the Bureau's modelers that the Wildcat CS application could be ruled complete from a modeling perspective. [Wildcat CS: NMED Exhibit 34 at 3; AR No. 7, Bates 243-245].

44. On July 8, 2020, Bureau staff ruled the Wildcat CS application administratively complete. [Wildcat CS: NMED Exhibit 34 at 3; AR No. 8, Bates 246-252].

45. Bureau staff began the technical reviews of the Wildcat CS application after a determination that the application was administratively complete. During the technical review, Bureau staff verified emissions calculations by confirming the correct emission factors and formulas were used in calculating emissions for all sources. If methods were unclear, Bureau staff asked the Permittee's consultant for further explanation or updates, as necessary. Bureau staff also verified the emissions totals from the calculations matched the emissions totals in Section 2 of each of the applications. [Wildcat CS: NMED Exhibits 27 at 4].

46. Bureau staff reviewed the emission calculations submitted in the Wildcat CS application for all regulated equipment and the emission factors relied upon in those calculations. The approved calculated emission rates were used as inputs into the Bureau's air dispersion modeling analysis. The air dispersion model predicts concentrations of the National Ambient Air Quality Standards (NAAQS) based upon the approved emission rates. The modeling report for Wildcat CS used the most up to date modeling and emissions calculations in the application. [Wildcat CS: NMED Exhibit 34 at 4-5].

47. The Bureau's administrative and technical reviews for the Wildcat CS application is summarized in the Statement of Basis, which is a permitting record that includes: (1) a description and history of the facility; (2) a regulatory applicability review; (3) a compliance

discussion; (4) any public response received by the Department; and (5) a summary any unique conditions in the permit. [Wildcat CS: NMED Exhibit 34 at 5; AR No. 18, Bates 278-285].

48. Bureau staff testified that based on the Bureau's administrative and technical review of the Wildcat CS application, the Bureau recommends that the Secretary adopt the Draft Permit. [Wildcat CS: NMED Exhibit 34 at 14].

**C. The Bureau's Public Outreach for the Respective Applications**

**i) Bulldog CS (AQB 21-31); Longhorn CS (AQB 21-33); Spartan CS (AQB 21-40); and Tiger CS (AQB 21-41)**

49. For each of the Bajracharya Applications Bureau staff sent the respective completion determination letters, including a copy of the Department's Legal Notices, and the invoices for the permit fees to the applicant on October 23, 2020 (Bulldog CS); October 30, 2020 (Longhorn CS); April 5, 2021 (Spartan CS); and April 7, 2021 (Tiger CS) [Bulldog CS: NMED Exhibit 21 at 3; AR No. 25, Bates 0395-0396; Longhorn CS: NMED Exhibit 22 at 3; AR No. 21, Bates 0931-0932; Spartan CS: NMED Exhibit 23].

50. On October 23, 2020, the Bureau sent the Bulldog CS Legal Notice and Affected Party letter to Carlsbad Caverns National Park, as required by regulation. The Bureau's Legal Notice and the Bulldog CS application were posted on the Bureau's website on October 23, 2020 and published in the *Carlsbad Current Argus* on October 27, 2020 [Bulldog CS: NMED Exhibit 21 at 3; AR No. 25, Bates 0395-0396; AR No. 21, Bates 0388-0389; AR No. 4, Bates 0249-0251].

51. On October 30, 2020, the Bureau sent the Longhorn CS Legal Notice and Affected Party Letter to the State of Texas, as required by regulation. The Bureau's Legal Notice and the Longhorn CS application were posted on the AQB website on October 30, 2020 and published in



the *Carlsbad Current Argus* on November 3, 2020. [Longhorn CS: NMED Exhibit 22 at 3; AR No. 21, Bates 0931-0932; AR No. 4, Bates 0230-0232].

52. On April 6, 2021, the Bureau sent the Spartan CS Legal Notice and Affected Party letter to Carlsbad Caverns National Park and the State of Texas, as required by regulation. The Legal Notice and the Spartan CS application were posted on the AQB website on April 7, 2021, and initially published in the *Carlsbad Current Argus* on April 8, 2021. A revised public notice was published in the *Carlsbad Current Argus* on April 24, 2021, to update the method for contacting permit writers for submission of comments. [Spartan CS: NMED Exhibit 23 at 3; AR Nos. 24, Bates 436; 6, Bates 297 – 299; 7, Bates 300 – 302].

53. On April 7, 2021, the Bureau sent the Spartan CS Legal Notice and Affected Party letter to Carlsbad Caverns National Park and the State of Texas, as required by regulation. The Legal Notice and permit application were posted on the Bureau's website on April 8, 2021, and initially published in the *Carlsbad Current Argus* on April 9, 2021 and a revised public notice published in the *Carlsbad Current Argus* on April 24, 2021 to update the method for contacting permit writers for submission of comments. [Tiger CS: NMED Exhibit 24 at 3; AR No. 24, Bates 435; AR No. 6, Bates 298 – 300; AR No. 7, Bates 301 – 303].

54. Once the respective public notices were published for the Bajracharya Applications interested persons were allowed thirty (30) days to express an interest in writing for the respective applications per 20.2.72.206(A)(5) NMAC. [Bulldog CS: NMED Exhibit 21 at 4; Longhorn CS: NMED Exhibit 22 at 5; AR No. 4; Spartan CS: NMED Exhibit 23 at 5; Tiger CS: NMED Exhibit 24 at 4].

55. The Bureau sent out the first citizen letters for the Bajracharya Applications on the following dates: (1) Bulldog CS was sent out on October 23, 2020; (2) Longhorn CS was sent out on December 3, 2020; (3) Spartan CS was sent out on April 6, 2021; and (4) Tiger CS was sent out on June 2, 2021. [Bulldog CS: NMED Exhibit 21 at 3; AR No. 25, Bates 0395-0396; Longhorn CS: NMED Exhibit 22 at 3; AR No. 22, Bates 0933; Spartan CS: NMED 23 at 3; AR No. 24, Bates 436; Tiger CS: NMED Exhibit 24 at 3; AR No. 42, Bates 470 - 471].

56. The Bureau received WildEarth Guardians' ("WEG") initial comments for the Bajaracharya Applications on the following dates: (1) Bulldog CS on November 24, 2020; (2) Longhorn CS on December 3, 2020; (3) Spartan CS: May 24, 2021; and (4) Tiger CS: May 24, 2021. [Bulldog CS: NMED Exhibit 21 at 3; AR No. 9, Bates 0333-0340; Longhorn CS: NMED Exhibit 22 at 3; AR No. 9, Bates 0312-0883; Spartan CS: NMED Exhibit 23 at 2; AR No. 12, Bates 388-392; Tiger CS: NMED Exhibit 24 at 2; AR No. 12, Bates 387 - 391].

57. On May 28, 2021, the Bureau mailed a copy of the Bulldog CS and Longhorn CS Draft Permits and the respective second citizen letters to WEG and interested parties. The respective draft permits and second citizen letters were posted on the AQB website May 28, 2021. This started the second 30-day comment period for the applications with an end date of June 27, 2021. The Bureau received additional comments from WEG on June 28, 2021. [Bulldog CS: NMED Exhibit 21 at 3; AR No. 25, Bates 0395-0396; Longhorn CS: NMED Exhibit 22 at 3 and 5; AR No. 25, Bates 0937-0938; AR No. 10, Bates 0884-0889].

58. On June 10, 2021, the Bureau mailed a copy of the Spartan CS Draft Permit and the respective second citizen letter to WEG and interested parties. The draft documents were then posted on the Bureau's website on June 11, 2021. This started the second 30-day comment period.

The Department received additional comments from WEG on July 12, 2021. WEG subsequently submitted a second round of comments on the draft permit and analysis on July 12, 2021. [Spartan CS: NMED Exhibit 23 at 3-4; AR Nos. 15, Bates 397; 13, Bates 393 – 396; 29, Bates 444].

59. On June 11, 2021, the Bureau emailed and mailed a copy of the Tiger CS Draft Permit and the respective citizen letter to WEG and interested parties. WEG subsequently submitted a second round of comments on the draft permit and analysis on July 12, 2021. [Tiger CS: NMED Exhibit 24 at 3; AR No. 15, Bates 396; AR No. 29, Bates 422-423; AR No. 13, Bates 392 – 395].

**ii) Jayhawk CS (AQB 21-32 ) and Maverick CS (AQB 21-39)**

60. For each of the Kuhn Applications, Bureau staff sent the respective completion determination letters, including a copy of the Department’s Legal Notices, and the invoices for the permit fees to the Permittee on October 29, 2020 (Jayhawk CS); and April 7, 2021 (Maverick CS). [Jayhawk CS: NMED Exhibit 31 at 4; Maverick CS: NMED Exhibit 32 at 3].

61. The Bureau found that there were no Affected Parties with regard to Jayhawk. Legal notice notification was sent to EPA Region 6 on October 29, 2020. The Bureau’s Legal Notice was posted on the AQB website on November 3, 2020 and published in the *Hobbs News-Sun* on November 3, 2020. [Jayhawk CS: NMED Exhibit 31 at 4; AR No. 34, Bates 640-642; AR No. 10, Bates 439-440].

62. The completion determination letter for Maverick CS, which includes a copy of the Department’s Legal Notice, and the invoice for the permit fee was sent to the applicant on April 7, 2021. The State of Texas was identified as the only Affected Party, as required by regulation, and notified of legal notice publication on April 7, 2021. Legal notice notification was sent to EPA

Region 6 on April 7, 2021. Bureau's Legal Notice was posted on the Bureau's website on April 7, 2021 and published in the *Carlsbad Current Argus* on April 9, 2021. A second legal notice to include the permit writer's email contact information was published on April 20, 2021, and the revised legal notice was subsequently posted on the Bureau's website. On June 9, 2021, the application, public notice, draft permit, and draft analysis were posted on the Bureau's website for Permit Applications with Public Interest, Public Meetings, or Public Hearing. [Maverick CS: NMED Exhibit 32 at 3-4; AR No. 8, Bates 630; AR No. 10, Bates 634-636; AR No. 33, Bates 836; AR No. 9, Bates 631-633; AR No. 13 and 14, Bates 661-724].

63. Once the respective public notices were published for the Kuhn Applications interested persons were allowed thirty (30) days to express an interest in writing for the respective applications per 20.2.72.206(A)(5) NMAC. [Jayhawk CS: NMED Exhibit 31 at 6; Maverick CS: NMED Exhibit 32 at 5].

64. The Bureau sent out the first citizen letters for the Kuhn Applications on the following dates: (1) Jayhawk CS was sent out on December 7, 2020; (2) Maverick CS was sent out on May 4, 2020. [Jayhawk CS: NMED Exhibit 31 at 3; AR No. 18, Bates 589-592; Maverick CS: NMED Exhibit 32 at 4; AR No. 18, Bates 785-788].

65. The Bureau received WildEarth Guardians' ("WEG") initial comments for the Kuhn Applications on the following dates: (1) Jayhawk CS on December 3, 2020; and (2) Maverick CS on May 20, 2021, with a Bureau response that was emailed to WEG on May 24, 2021. [Jayhawk CS: NMED Exhibit 31 at 6; AR No. 16, Bates 475-582; Maverick CS: NMED Exhibit 32 at 5; AR No. 16, Bates 775-780].

66. On May 28, 2021, the Bureau mailed a copy of the Jayhawk CS Draft Permit and the respective second citizen letters to WEG and interested parties. The respective draft permits and second citizen letters were posted on the AQB website May 27, 2021. This started the second 30-day public comment period. The Bureau received additional comments from WEG on June 28, 2021. [Jayhawk CS: NMED Exhibit 31 at 6; AR No. 13 and 14, Bates 464-525; AR No. 19, Bates 593; AR No. 17, Bates 583-588].

67. On June 9, 2021, the Bureau mailed a copy of the Maverick CS Draft Permit and the respective second citizen letter to WEG and interested parties. The draft documents were also posted on the Bureau's website on June 9, 2021. This started the second 30-day comment period. The Department received additional comments from WEG on July 9, 2021. [Maverick CS: NMED Exhibit 32 at 5-6; AR No. 13 and 14, Bates 661-724; AR No. 19, Bates 789; AR No. 17, Bates 781-784].

**iii) Cowboy CDP (AQB 21-34)**

68. For the Cowboy CDP application, on May 29, 2020, Bureau staff sent the completion determination letter, including a copy of the Department's Legal Notice, and the invoice for the permit fee to the applicant. Bureau staff also sent the Bureau's Legal Notice to EPA Region 6 and Erica LeDoux at EPA, and to the Texas Commission on Environmental Quality, along with the Affected Program letter. The Department's Legal Notice was posted on the AQB website page with all public notices of permitting actions. The Bureau's administrative staff sent the Department's Legal Notice to the *Carlsbad Current Argus* for publication, and it was published on June 2, 2020. [Cowboy CDP: NMED Exhibit 27 at 3-4; AR No. 18, Bates 0877; AR No. 16,

Bates 0870-0975; AR No. 17, Bates 0876; AR No. 20, Bates 0884; AR No. 21, Bates 0885-0886; AR No. 22, Bates 0887-0889].

69. Once the public notice was published for the Cowboy CD application interested persons were allowed thirty (30) days to express an interest in writing for the respective applications per 20.2.72.206(A)(5) NMAC. The comment period ended on July 2, 2020. [Cowboy CDP: NMED Exhibit 27 at 5-6].

70. The Bureau sent out the initial citizen letter to WEG on June 30, 2020. [Cowboy CDP: NMED Exhibit 27 at 6; AR No. 32, Bates 0957-0960; AR No. 33, Bates 0961-0964].

71. On February 23, 2021, the Bureau sent the second citizen letter to WEG. The letter had a link to the Bureau's analysis, including the Statement of Basis and modeling review report, which were posted on the Bureau's web page for permit applications with public interest. [Cowboy CDP: NMED Exhibit 27 at 6; AR No. 84, Bates 3206; AR No. 85, Bates 3207; AR No. 86, Bates 3208-3211].

72. The Bureau received WEG's comments and request for hearing for the Cowboy CDP application on March 25, 2021. [Cowboy CDP: NMED Exhibit 27 at 6-7; AR No. 92, Bates 3264; AR No. 93, Bates 3265-3270].

**iv) Wildcat CS (AQB 21-34)**

73. For the Wildcat CS application, public notice was published in the *Carlsbad Current Argus* on July 17, 2020 and the end of the 30-day comment period was August 16, 2020. The Bureau received the first comment letters from New Energy Economy, Sierra Club: Rio Grande Chapter, Western Environmental Law Center, and WEG on July 27, 2020. Upon completion of the analysis and the draft permit, the documents were published on the AQB website

for “Permit Applications with Public Interest, Public Meeting, or Public Hearing” on March 2, 2021. On March 2, 2021, the second citizen letter and a copy of the permit documents were emailed to WEG. This started the second 30-day comment period. The Department received additional comments from WEG on April 1, 2021. [Wildcat CS: NMED Exhibit 34 at 5-6; AR No. 11, Bates 255-257; AR No. 12, Bates 258-264; AR No. 18, 19, & 20, Bates 278-285, 286-335, 336-345; AR No. 16, Bates 272; AR No. 17, Bates 273-277].

74. Once the public notice was published for the Wildcat CS application interested persons were allowed thirty (30) days to express an interest in writing for the respective applications per 20.2.72.206(A)(5) NMAC. The comment period ended on July 2, 2020. [Wildcat CS: NMED Exhibit 34 at 5].

**D. The Respective Draft Permits**

**i) Bulldog CS (AQB 21-31); Longhorn CS (AQB 21-33); Spartan CS (AQB 21-40); and Tiger CS (AQB 21-41)**

75. The Bulldog CS and Longhorn CS Draft Permits were issued on May 28, 2021. [Bulldog CS: AR No. 8, Bates 0279-0332; Longhorn CS: AR No. 8, Bates 0259-0311].

76. The Spartan CS Draft Permit was issued on June 10, 2021. [Spartan CS: NMED Exhibit 23 at 5; AR No. 29, Bates 444].

77. The Tiger CS Draft Permit was issued on June 11, 2020. [Tiger CS: NMED Exhibit 24 at 5; AR No. 11, Bates 333-386].

78. Conditions in Part A of the Bajracharya Applications’ respective Draft Permits are Facility Specific Requirements, unique to the facility. They are site-specific and based on information provided in the applications. Conditions in Part B of the permits are General

Conditions and standard language which generally apply to all sources. Part C is also standard language about supporting on-line documents, definitions, and acronyms which apply to all sources. [Bulldog CS: NMED Exhibit 21 at 5; AR No. 8, Bates 0279-0332; Longhorn CS: NMED Exhibit 22 at 6; AR No. 8, Bates 0259-0311; Spartan CS: NMED Exhibit 23 at 5-6; AR No. 11, Bates 334-387; Tiger CS: NMED Exhibit 24 at 5-6; AR No. 11, Bates 333-386].

79. The Bajracharya Applications' respective Draft Permits each began with standardized language in an AQB permit template and standardized AQB monitoring protocols added as necessary for the sources of emissions and control devices proposed for each facility. Since all of the Bajracharya Applications were for modifications to existing permits, many conditions were already in place but required revision to address respective facility changes. [Bulldog CS: NMED Exhibit 21 at 5-6; Longhorn CS: NMED Exhibit 22 at 6; Spartan CS: NMED Exhibit 23 at 5-6; AR No. 11, Bates 334-387; Tiger CS: NMED Exhibit 24 at 5-6; AR No. 11, Bates 333-386].

**ii) Jayhawk CS (AQB 21-32 ) and Maverick CS (AQB 21-39)**

80. The Jayhawk CS Draft Permit was issued on May 27, 2021. [Jayhawk CS: NMED Exhibit 31 at 6 CS; AR No. 14, Bates 474-525].

81. The Maverick CS Draft Permit was issued on June 9, 2021. [Maverick CS: NMED Exhibit 32 at 5-6; AR No. 14, Bates 671-724].

82. Conditions in Part A of the Kuhn Applications' respective Draft Permits are Facility Specific Requirements, unique to the facility. They are site-specific and based on information provided in the applications. Conditions in Part B of the permits are General Conditions and standard language which generally apply to all sources. Part C is also standard language about



supporting on-line documents, definitions, and acronyms which apply to all sources. [Jayhawk CS: NMED Exhibit 31 at 6; AR No. 14, Bates 474-525; Maverick CS: NMED Exhibit 32 at 6; AR No. 14, Bates 671-724].

83. The Kuhn Applications' respective Draft Permits each began with standardized language in an AQB permit template and standardized AQB monitoring protocols added as necessary for the sources of emissions and control devices proposed for each facility. Since all of the Bajracharya Applications were for modifications to existing permits, many conditions were already in place but required revision to address respective facility changes. [Id.].

**iii) Cowboy CDP (AQB 21-34)**

84. The Cowboy CDP Draft Permit was issued on February 23, 2021. [Cowboy CDP NMED Exhibit 27 at 4; AR No. 2, Bates 0349-0382 ].

85. Conditions in Part A of the Cowboy CDP Draft Permit are facility specific requirements, unique to the facility. They are site-specific and based on information provided in the applications. Conditions in Part B of the permits are General Conditions and standard language which generally apply to all sources. Part C is also standard language about supporting on-line documents, definitions, and acronyms which apply to all sources. [Cowboy CDP NMED Exhibit 27 at 7; AR No. 2, Bates 0349-0382; AR No. 1, Bates 0001-0348; AR No. 3, Bates 0383-0404].

86. The Cowboy CDP Draft Permit began with standardized language in a Bureau permit template and standardized Bureau monitoring protocols added as necessary for the sources of emissions and control devices proposed for each facility. Bureau staff wrote unique permitting conditions for site specific operations and equipment, based on information provided in the application. For example, Bureau staff included a specific condition for the floating roof tank

SSMs, and a requirement for oil analysis and the methodology to calculate the emissions. Permit conditions establish ongoing testing and monitoring requirements for processes and pieces of equipment to ensure the equipment is operating in accordance with the permitted emission limits. [Cowboy CDP NMED Exhibit 27 at 7; AR No. 1, Bates 0001-0348].

**iv) Wildcat CS (AQB 21-35)**

87. The Wildcat CS Draft Permit was issued on February 23, 2021. [Wildcat CS NMED Exhibit 34 at 4; AR No. 19, Bates 206].

88. Conditions in Part A of the Wildcat CS Draft Permit are facility specific requirements, unique to the facility. They are site-specific and based on information provided in the applications. Conditions in Part B of the permits are General Conditions and standard language which generally apply to all sources. Part C is also standard language about supporting on-line documents, definitions, and acronyms which apply to all sources. [Wildcat CS NMED Exhibit 34 at 6; AR No. 16, Bates 278].

89. The Wildcat CS Draft Permit began with standardized language in a Bureau permit template and standardized Bureau monitoring protocols added as necessary for the sources of emissions and control devices proposed for each facility. Bureau staff wrote unique permitting conditions for site specific operations and equipment, based on information provided in the application. For example, Bureau staff included a specific condition for the floating roof tank SSMs, and a requirement for oil analysis and the methodology to calculate the emissions. Permit conditions establish ongoing testing and monitoring requirements for processes and pieces of equipment to ensure the equipment is operating in accordance with the permitted emission limits. [Wildcat CS NMED Exhibit 34 at 6-7].

**E. Air Dispersion Modeling for the Respective Permits**

**i) Longhorn CS (AQB 21-33); Cowboy CDP (AQB 21-34); Maverick CS (AQB 21-39); and Tiger CS (AQB 21-41)**

90. Eric Peters, Modeler for the Bureau, performed the modeling analysis for Longhorn CS (AQB 21-33); Cowboy CDP (AQB 21-34); Maverick CS (AQB 21-39); and Tiger CS (AQB 21-41) (referred to collectively at “Peters Applications”). [NMED Exhibits 3-6]

91. Bureau staff reviewed the modeling submitted by the Permittees for the Peters Applications. The Bureau verified that each facility followed appropriate modeling practices, as informed by the New Mexico Modeling Guidelines. Details of the modeling for each facility are described in the respective Modeling Review Reports. [Longhorn CS: NMED Exhibit 5 at 1; NMED Exhibit 15; AR No. 1; AR No. 5; Cowboy CS: NMED Exhibit 3 at 1; AR No. 6; Maverick CS: NMED Exhibit 4 at 1; AR No. 11; Tiger CS: NMED Exhibit 6 at 1; AR No. 1; AR No. 8].

92. The Department maintains the New Mexico Modeling Guidelines to provide a basis for acceptable modeling analyses. These guidelines incorporate and interpret the most recent version of EPA’s Guideline on Air Quality Models, which was published in the Federal Register, Vol. 82, No. 10. The New Mexico Modeling Guidelines also incorporate other information and guidance, such as EPA memorandums. [Id.].

93. The modeling for all of the Peters Applications was performed in accordance with the New Mexico Modeling Guidelines. If the respective facilities operate in compliance with the terms and conditions of the respective draft permits, then they will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. The facilities have satisfied all modeling requirements. [Id.]

**ii) Bulldog CS (AQB 21-31); Jayhawk CS (AQB 21-32 ); Wildcat CS (AQB 21-35); and Spartan CS (AQB 21-40)**

94. Angela Raso, Modeler for the Bureau, performed the modeling analysis for Bulldog CS (AQB 21-31); Jayhawk CS (AQB 21-32 ); Wildcat CS (AQB 21-35); and Spartan CS (AQB 21-40) (referred to collectively at “Raso Applications”). [NMED Exhibits 8-10, 13]

95. Bureau staff verified that the Raso Applications followed appropriate modeling practices, as informed by the New Mexico Modeling Guidelines. Details of the modeling are described in the respective Modeling Review Reports. [NMED Exhibit 15; Bulldog CS: NMED Exhibit 8 at 1-2; AR No. 5; Jayhawk CS: NMED Exhibit 10 at 1-2; AR No. 11; Wildcat CS: NMED Exhibit 13 at 1-2; AR No. 44; Spartan CS: NMED Exhibit 9 at 1-2; AR No. 8].

96. Bureau staff confirmed that the modeling for the Raso Applications were performed in accordance with the New Mexico Modeling Guidelines. If the facilities operate in compliance with the terms and conditions of the respective draft permits, then they will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. The facilities have satisfied all modeling requirements. [Id.].

**F. Public Notice of the Hearing**

97. Public notice for the hearing in this matter was done for all of the Permittees’ applications (“XTO Applications”) in one newspaper ad. [NMED Exhibit 19 at 1-2].

98. The Notice of Hearing was written per requirements in 20.1.4 NMAC. The Notice of Hearing was translated into Spanish by Ana Maria MacDonald, Translation Program Manager for the Department, and was received by the Bureau on September 20, 2021. On September 21, 2021, Notices of Hearing in English and in Spanish were posted on the Department’s Docketed

Matters page under the Cabinet Secretary dropdown, in the link for the respective docket number and facility name. The notice was also posted on Department's public notice website under the Lea or Eddy County dropdown, in the link for each of the facilities included in the hearing. [Id. *See individual permit sections above for citations to specific notice documents*]

99. The Notice of Hearing was published in English and in Spanish in three newspapers. Both Notices were published in the *Carlsbad Current-Argus* on September 22, 2021. Both Notices were published in the *Albuquerque Journal* on September 23, 2021. Both Notices were published in the *Hobbs Daily News-Sun* on September 24, 2021. On September 22, 2021, emails with the Notices of Hearing in English and in Spanish attached were sent to individuals and groups that had been previously directly notified about one of the permit applications or that submitted comments on a permit application. [Id. at 2-3. *See individual permit sections above for citations to specific notice documents*].

100. For Cowboy CDP, the notices were sent to the State of Texas, Carlsbad Caverns National Park, the Bureau of Land Management, the Lea County Manager, the Eddy County Manager, the State of NM Land Office, the US EPA, and both J. Nichols and M. Nykiel from WEG. For Zia Hills, the notices were sent to M. Nykiel from WEG, the State of Texas, the Bureau of Land Management, the Lea County Manager, the Eddy County Manager, and US EPA. For Wildcat Compressor Station, these notices were sent to the State of Texas, the Bureau of Land Management, the Lea County Manager, the Eddy County Manager, the State of NM Land Office, the US EPA, New Energy Economy, the Rio Grande Chapter of the Sierra Club, the Western Environmental Law Center, and both J. Nichols and M. Nykiel from WEG. For Jayhawk Compressor Station the notices were sent to the Bureau of Land Management, the Lea County

Manager, the Eddy County Manager, the State of NM Land Office, the US EPA, the New Mexico Environmental Law Center, the Center for Biological Diversity, the Western Environmental Law Center, and both J. Nichols and M. Nykiel from WEG. For Maverick Compressor Station the notices were sent to the Bureau of Land Management, the Lea County Manager, the Eddy County Manager, the State of NM Land Office, the US EPA, the State of Texas, and both J. Nichols and M. Nykiel from WEG. For Willow Lake the notices were sent to the Bureau of Land Management, the Lea County Manager, the Eddy County Manager, the State of NM Land Office, the US EPA, the State of Texas, Carlsbad Caverns National Park, Carlsbad Department of Development ("CDD"), the Village of Loving, and both J. Nichols and M. Nykiel from WEG. For the permits for Bulldog Compressor Station, Longhorn Compressor Station, Tiger Compressor Station, and Spartan Compressor Station the notices were sent to the Bureau of Land Management, the Lea County Manager, the Eddy County Manager, the State of NM Land Office, the US EPA, the State of Texas, Carlsbad Caverns National Park, and both J. Nichols and M. Nykiel from WEG. These emails included a message informing the recipients the Notices of Hearing along with other information were available for review on NMED's public notice website <https://www.env.nm.gov/public-notices-2/> under the Eddy or Lea County dropdown, in the link with the name of this facility. [Id. at 3-7. *See individual permit sections above for citations to specific notice documents*]

#### **G. WildEarth Guardians' Challenges to the Permits**

101. At the public hearing in this matter, WEG's witness testified that the Bureau had resolved most of WEG's concerns about the respective applications and draft permits with a few exceptions. The witness explained

[WEG] provided comments on the initial -- during the initial comment period whereby the Environment Department asks if there's any public interest. We signaled that we were interested and tried to provide some comments, some general comments. When the Environment Department afforded us a second opportunity to comment and provided us a draft permit and statement of basis to review, we submitted further comments, often elaborating on our original letter and original concerns that we raised. And we did that for all these permits . . . we weighed in, we constantly gave the Environment Department information, and flagged our concerns, and now during this hearing we're finally getting some clarity around some of our questions, some of our concerns, and some issues with the permits.

[10/26/21 2 Tr. 314:11-21; 315:1-16]

102. WEG's witness testified that the only outstanding challenges to the draft permits were in "the adequacy of legal notice, the enforceability of startup, shutdown, maintenance, and malfunction emission limits, and compliance with the Executive Order on Environmental Justice.

[for] Longhorn, Cowboy, Wildcat, and Jayhawk." [10/26/21 2 Tr. 314:11-21; 315:6-316:12]

**i) Email Address Exclusion in the Notice of Application**

103. At the hearing, WEG raised concerns about the exclusion of a Bureau contact email address in the Bureau's public notice for the Bulldog CS, Longhorn CS, Cowboy CDP, Jayhawk CS, and Wildcat CS. WEG's witness explained that

we believe that the Environment Department did not provide an e-mail address for the public to provide comment to, and instead simply provided a mailing address to which to send comments, and that it may have limited the public involvement inappropriately, particularly in light of the COVID-19 pandemic. And given that the Department republished notice for other permits, we felt that it was appropriate for them to republish notice for these 4 permits, as well.

[10/26/21 2 Tr. 316:19-317:4]

104. With regard to the issue of the email address not being included in the notice for the Bulldog CS, Longhorn CS, and Wildcat CS applications, Bureau staff testified that, at the time when the notice of the application was due to be published,

a permit writer has not been assigned and therefore their email address cannot be included in the applicant's notice. While the standard text for the applicant's notice states that comments should be submitted in writing, it also provides a toll-free phone number that would allow any interested party to reach the Bureau with questions. That provides an opportunity to register an objection or concern to mailing comments, and to request an alternative submission method. No phone calls making such a request were received on this permit. In response to the concern about the AQB notice specifying comments must be submitted in writing, AQB's re-publication of the public notice for several other permits did not generate any additional public interest from any other party for those permits. That result on the other permits indicates that WildEarth Guardians' assertion that the omission of an email address prevented other interested parties from providing comment is unlikely to be correct.

[Bulldog CS: NMED Exhibit 21 at 8; Longhorn CS: NMED Exhibit 22 at 8; Wildcat CS: NMED Exhibit 35 at 8-9].

105. With regard to WEG's concerns about an excluded email address in the public notice for the Cowboy CDP application, Bureau staff testified that

For this permit, the initial 30-day comment period had concluded on July 2, 2020, over 8 months before this comment was received. Therefore, the newspaper notice was not re-published and another 30-day comment initial notice was not done for the permit action. [The Bureau's] re-publication of the public notice for several other permits did not generate any additional public interest from any other party for those permits. These results suggest that WildEarth Guardians' assertion that the omission of an email address prevented other interested parties from providing comment is unlikely to be correct. The public notice from the first comment period and the draft documents for the 30-day analysis period were posted to [the Bureau's] website on February 23, 2021 and therefore were available to the public. The [Bureau] has updated its legal notices for air quality permit proposals, so that future legal notices include an email address for comment submissions, in recognition of the public health risks of COVID-19.

[Cowboy CDP: NMED Exhibit 27 at 9; AR No. 86, Bates 3208-3211].

106. With regard to WEG's concerns about an excluded email address in the public notice for the Jayhawk CS application, Bureau staff testified that

For this permit, the initial 30-day comment period had concluded six months before



this comment was received. Therefore, the newspaper notice was not republished, and another 30-day comment initial notice was not done for these permits. [The Bureau's] re-publication of the public notice for several other permits did not generate any additional public interest from any other party for those permits. That result on the other permits indicates that WildEarth Guardians assertion that the omission of an email address prevented other interested parties from providing comment is unlikely to be correct. The public notice for the first comment period and the draft documents for the 30-day analysis period were posted to [The Bureau's] website on November 3, 2020 and on May 27, 2021, respectively, and therefore were available to the public.

[Jayhawk CS: NMED Exhibit 31 at 9-10].

**ii) Environmental Justice**

107. At the hearing, WEG raised concerns about the Bureau's permitting procedures with regard to the issue of environmental justice. WEG's witness testified that

I mean, our concerns basically boil down to the substance of what environmental justice is, that procedurally the Environment Department may have taken some steps to address environmental justice concerns, but that substantively environmental justice was not achieved, primarily around the issue of cumulative impacts related to ozone pollution, which as we commented, can disproportionately impact people of color and low-income communities that may be impacted by other sources of industrial air pollution, and therefore are experiencing compound effects related to high ozone, and that those effects should have been addressed as part of their duty to ensure environmental justice.

[10/26/21 2 Tr. 317:11-24].

108. The Permittee objected to WEG's testimony on the grounds that WEG's witness was not qualified to draw the legal conclusion that the Bureau did not fulfill its duty with regard to the issue of environmental justice. The Hearing Officer sustained the objection. [10/26/21 2 Tr. 341:13-21].

**iii) Flaring Events**

109. WEG raised concerns about how all of the draft permits in this matter deal with

flaring events. WEG's witness testified

One, the startup, shutdown, and maintenance [for all 8 permits] emissions related to flaring, which is a common limit in all [8] permits. The concern there is that the number of flaring events or startup, shutdown, maintenance events are not limited such that as a practical matter the annual limits will actually be complied with, that they -- the intention is that those annual limits serve as a backstop, but as a practical matter, because there are no limits on operational parameters to limit the hourly emissions or the number of hourly emissions events, that as a practical matter that backstop is not effective.

The second issue related to those -- enforceability of these limits is related to venting emissions, primarily venting during malfunction events, but there are venting emission limits in relation to other events, as well. The concern there is that the permits do not set forth any kind of methodology or specific requirement for how the companies must measure the volume of VOC emissions. It uses -- the permits use very general language that does not ensure that as a practical matter accurate volumes of VOC emissions will be calculated such that companies will be able to effectively demonstrate compliance with the venting emission limits.

[10/26/21 2 Tr. 318:10-319:10].

110. Bureau staff testified that all of the draft permits "comply with all air quality regulations and contain demonstrations of compliance for all conditions and emission limits to ensure compliance with Ambient Air Quality Standards. [NMED Exhibit 17 at 9].

## **II. PROPOSED CONCLUSIONS OF LAW**

111. The Secretary has jurisdiction over the subject matter of the Application and the parties to this proceeding and is authorized by the Act to issue or deny permits for new and existing facilities based upon information submitted in a permit application and relevant information received during the public hearing. NMSA 1978, §74-2-7 (1972 as amended through 2003); 20.2.72.206-207 NMAC.

112. In a permit proceeding hearing before the Secretary of the Environment, "the

Applicant or Petitioner has the burden of proof that a permit . . . should be issued and not denied . . . the [Bureau] has the burden of proof for a challenged condition of a permit or license which the [Bureau] has proposed. Any person who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” 20.1.4.400(A)(1) NMAC.

113. The Permittee properly submitted its Applications pursuant to the Air Quality Control Act (“Act”), NMSA, 1978 74-2-1 to -17 (1967 as amended through 2019) and the Air Quality Rules, and all the required information is included in the application. 20.2.72.200(A); 20.2.72.402(A)(3); 20.2.72.203 and 20.2.72.403 NMAC.

114. Permittee’s Applications establish that the respective Facilities meets the applicable statutory and regulatory standards, will not cause or contribute to air contaminant levels in excess of national or state standards or, and will not violate any other provision of the Air Quality Control Act or the CAA. NMSA 1978, § 74-2-7(C).

115. The Bureau’s administrative and technical reviews of the Applications were thorough, complete, and sufficient to support the determination that the Applications were administratively and technically complete. 20.2.72.201(B); 20.2.72.207(A) NMAC.

116. The Bureau has met all the elements of the statutory and regulatory standards with regard to public notice of the determination of administrative and technical completeness, and notice of the Draft Permits. NMSA 1978, §§ 14-11-2 (1941 as amended through 1999); 14-11-4 (1941); 14-11-6 (1941); 14-11-10.2 (2003); 20.2.72.206(A)(3) NMAC.

117. The Bureau has met all the elements of the regulatory standard with regard to public notice of the public hearing. NMSA 1978, §§ 14-11-2 (1941 as amended through 1999); 14-11-4

(1941); 14-11-6 (1941); 14-11-10.2 (2003); 20.1.4.200(C)(2)(a) NMAC.

118. The Bureau has met all of the elements of the regulatory standards with regard to public outreach and receiving public comment. 20.2.72.206(A)(1) and (2) NMAC; 20.2.72.206(B) NMAC.

119. The Public Hearing in this matter was held in accordance with an Order for a public hearing entered by the Secretary of the Environment. 20.2.72.206(C) NMAC.

120. The hybrid virtual/in-person venue of the Public Hearing in this matter was appropriate and complied with the standing public health orders. NMSA 1978, § 47-2-7(I) (1972 as amended through 2003); 20.2.72.206-207 NMAC; and 20.1.4 NMAC; Executive Order 2020-004; 3-24-20 Public Health Order.

121. WEG has failed to meet its burden to prove that any conditions of any of the Draft Permits are inadequate, improper or invalid. 20.1.4.100(A)(1) NMAC.

122. The Draft Permits meet all of the applicable standards, rules and requirements of the Air Quality Control Act and the CAA. NMSA 1978, § 74-2-7(C).

### **III. CONCLUSION**

For the reasons set forth above, the Bureau respectfully requests that the Hearing Officer adopt these findings of fact and conclusions of law, and recommend that the Secretary uphold the Bureau's decision to issue the respective permits in this matter.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing New Mexico Environment Department Air Quality Bureau's *Proposed Findings of Fact and Conclusions of Law* was served via electronic mail on the following parties of record on December 3, 2021:

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